

ARKANSAS SUPREME COURT

No. 06-901

NOT DESIGNATED FOR PUBLICATION

CURTIS MITCHELL
a/k/a CURTIS O'NEAL MITCHELL
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered November 9, 2006

PRO SE MOTION FOR DUPLICATION
OF BRIEF AT PUBLIC EXPENSE
[CIRCUIT COURT OF LEE COUNTY,
CV 2005-154, HON. HARVEY YATES,
JUDGE]

APPEAL DISMISSED; MOTION
MOOT.

PER CURIAM

Curtis Mitchell, also known as Curtis O'Neal Mitchell, was found guilty by a Poinsett County jury of aggravated robbery and was sentenced to sixteen years' imprisonment. The Arkansas Court of Appeals affirmed. *Mitchell v. State*, CACR 02-523 (Ark. App. April 2, 2003). Subsequently, appellant filed in the trial court a petition for postconviction relief pursuant to Ark. R. Crim. P. 37.1. The trial court denied the petition as being untimely filed. Appellant sought a belated appeal of the trial court's order. This court denied the motion. *Mitchell v. State*, CR 04-619 (Ark. September 30, 2004).

Appellant, who is currently incarcerated in the Arkansas Department of Correction, filed a petition for writ of *habeas corpus* in Lee County, Arkansas, seeking his release. The trial court denied the petition. Appellant, proceeding *pro se*, has lodged an appeal in this court from the trial court's order.

Now before us is appellant's *pro se* motion for duplication of brief at public expense. We

need not consider this motion as it is apparent that appellant could not prevail in this appeal if it were permitted to go forward. Accordingly, we dismiss the appeal and hold the motion moot. This court has consistently held that an appeal from an order that denied a petition for postconviction relief will not be permitted to go forward where it is clear that the appellant could not prevail. *See Pardue v. State*, 338 Ark. 606, 999 S.W.2d 198 (1999) (*per curiam*); *Seaton v. State*, 324 Ark. 236, 920 S.W.2d 13 (1996) (*per curiam*).

We will initially address two procedural matters. First, we note that appellant failed to include a copy of the judgment and commitment order in his addendum on appeal. It is well settled that the burden is on the petitioner in a *habeas corpus* petition to establish that the trial court lacked jurisdiction or that the commitment was invalid on its face; otherwise, there is no basis for a finding that a writ of *habeas corpus* should issue. *Young v. Norris*, ___ Ark. ___, ___ S.W.3d ___ (February 2, 2006) (*per curiam*). It is also appellant's duty to bring up a record sufficient to demonstrate error. *City of Benton v. Arkansas Soil and Water Conservation Commission*, 345 Ark. 249, 45 S.W.3d 805 (2001). We will, however, not require appellant to file a substituted addendum to cure this deficiency in conformance with Ark. Sup. Ct. R. 4-2(b), as it is clear on the record before us that appellant could not prevail. *See Pardue, supra*; *Seaton, supra*.

Second, we note also that the appellant failed to direct his petition to the proper party. Arkansas Code Annotated § 16-112-105(b)(1) (Repl. 2006) requires that “[t]he writ shall be directed to the person in whose custody the prisoner is detained[.]” *State Department of Public Welfare v. Lipe*, 257 Ark. 1015, 521 S.W.2d 526 (1975). Such person having custody of the prisoner may be designated in the petition by either their name or office. Ark. Code Ann. § 16-112-105(c)(1) (Rep. 2006). Thus, by naming the State of Arkansas as the appellee, appellant failed to direct the writ to

the custodian of his person.

On appeal, appellant maintains that the trial court erred when it denied his request for bail, and when it denied appellant's petition for writ of *habeas corpus* "without ruling on the merits of the allegations" alleged therein. However, in his *pro se* petition filed in the trial court, appellant maintained that the trial court failed to bring appellant to trial within the speedy-trial time limitations set forth in Ark. R. Crim. P. 28.1, 28.2 and 28.3, and that he received ineffective assistance of counsel.

It is well-settled that the we will not consider an argument raised for the first time on appeal. *Ayers v. State*, 334 Ark. 258, 975 S.W.2d 88 (1998). Issues raised, including constitutional issues, must be presented to the trial court to preserve them for appeal. *Standridge v. State*, 357 Ark. 105, 161 S.W.3d 815 (2004). Appellant is therefore prohibited from raising new claims for the first time on appeal. As a result, this court cannot address appellant's claim related to his entitlement to bail.

Also, claims raised below but not argued on appeal are abandoned. *See Jordan v. State*, 356 Ark. 248, 147 S.W.3d 691 (2004). As appellant's substantive claims on appeal are entirely different than the claims made below, he abandoned the arguments made to the trial court regarding speedy-trial and ineffective assistance of counsel.

Finally, without citing any authority, appellant claims on appeal that the trial court failed to address all the issues presented to the trial court. In essence, appellant alleges that the trial court erred when it issued an order that did not contain findings of fact and conclusions of law, specifically addressing both bases for appellant's petition. Criminal Procedure Rule 37.3(a) requires a circuit court to make written findings and to specify any parts of the record relied upon if the court denies a Rule 37.1 petition without first holding a hearing. In contrast, the statutes governing petitions for

writ of *habeas corpus* proceedings contain no similar specificity requirement. Moreover, this court has held that it will not consider an argument that presents no citation to authority or convincing argument. *Kelly v. State*, 350 Ark. 238, 85 S.W.3d 893 (2002).

Appeal dismissed; motion moot.

Glaze, J., not participating.